

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 11, 2001 Session

**LINDA MARIE CHAMBERLAIN FRYE v.
RONNIE CHARLES FRYE**

IN RE: JUDGMENT OF HERBERT S. MONCIER

**Appeal from the Chancery Court for Knox County
No. 143602-3 Sharon Bell, Chancellor**

FILED JULY 24, 2001

No. E2000-02123-COA-R3-CV

This suit was filed in July of 1999 to enforce two judgments in favor of attorney Herbert S. Moncier ("Plaintiff") against Ronnie Charles Frye ("Defendant"). One judgment was entered in 1985 and the other in 1986. The judgments were for attorneys fees and/or costs in an underlying divorce action, which the Trial Court taxed as "child support" against the Defendant. Defendant filed a motion to dismiss claiming that the applicable ten year statute of limitations period to enforce both judgments had expired. After denying the motion to dismiss, the Trial Court granted summary judgment to Plaintiff. On appeal, we must decide whether the ten year statute of limitations period in Tenn. Code Ann. § 28-3-110(2) applies in this case and, if so, has it run. We conclude that the ten year statute of limitations period found in Tenn. Code Ann. § 28-3-110(2) is applicable and that it began to run when the respective judgments were entered. Because this action was not timely filed, we reverse the grant of summary judgment to Plaintiff, and reverse the denial of Defendant's motion to dismiss.

**Tenn. R. App. P. 3 Appeal as of Right;
Judgment of the Chancery Court Reversed; Case Remanded.**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and HERSCHEL P. FRANKS, J., joined.

Donald K. Vowell, Knoxville, Tennessee, for the Appellant Ronnie Charles Frye.

Herbert S. Moncier and Ursula Bailey, Knoxville, Tennessee for Appellee Herbert S. Moncier.

OPINION

Background

Plaintiff represented Linda Marie Chamberlain Frye (“Mrs. Frye”) in her divorce action against Defendant. On May 20, 1985, the Trial Court entered an Order *nunc pro tunc* disposing of various issues raised in the divorce action, one of which involved child support arrearages which had accumulated after previous court orders had been entered. At that time, Defendant was behind on child support payments. In addressing the child support arrearages, the Trial Court entered judgment in favor of Plaintiff for attorney fees in the amount of \$10,215.50, plus statutory interest, “to be taxed and considered as child support.” The Trial Court declared this to be the “present, total amount of the judgment in favor of . . . [Plaintiff], except as hereinafter provided.” Plaintiff was then awarded an additional sum of \$1,200.00 as “attorney fees to be taxed as child support” and was further awarded “out of pocket” expenses. On January 22, 1986, the Trial Court amended its Order and granted Plaintiff further judgment in the amount of \$1,072.22 for these out of pocket expenses. The total amount of attorney fees and expenses awarded to Plaintiff in the two judgments was \$12,487.72.

On July 14, 1999, Plaintiff filed an Action to Renew Judgment against Defendant claiming that Defendant never satisfied the judgments rendered against him. Plaintiff sought the \$12,487.72, plus statutory interest at the rate of ten percent. Defendant filed a motion to dismiss, arguing that the action was barred by the applicable ten year statute of limitations contained in Tenn. Code Ann. § 28-3-110. The Trial Court denied the motion to dismiss. Plaintiff then filed a motion for summary judgment. Plaintiff claimed that the statute of limitations did not begin to run until the child reached the age of eighteen, which occurred on February 27, 1992, and therefore the action was timely filed. The March 15, 2000, Order of the Trial Court granted summary judgment to Plaintiff in the amount of \$12,487.22, plus accrued interest in the amount of \$20,755.07, for a total judgment to Plaintiff of \$32,242.29. Defendant filed a Motion to Alter or Amend Judgment, which was denied by the Trial Court. Defendant appeals the grant of summary judgment to Plaintiff, as well as the denial of his motion to dismiss. We reverse both the grant of summary judgment to Plaintiff and the denial of Defendant’s motion to dismiss because this lawsuit is barred by the applicable statute of limitations.

Discussion

The facts relevant to this appeal are not in dispute.¹ Resolution of a statute of limitations issue involves statutory interpretation. Construction of a statute and its application to the facts is an issue of law and, therefore, our standard of review is *de novo* without any presumption

¹ Defendant also claims there was a genuine issue of material fact regarding whether a portion of these judgments had been paid. Because we conclude that the applicable statute of limitations bars the present action, we need not decide this issue.

of correctness given to the Trial Court's conclusions of law. *See Lavin v. Jordon*, 16 S.W.3d 362, 364 (Tenn. 2000).

Tenn. Code Ann. § 28-3-110(2) provides a ten year statute of limitations for “[a]ctions on judgments and decrees of courts of record of this or any other state or government.” This Court has pointed out that “absent a clear legislative mandate, child support judgments are subject to the defense of the statute of limitations as is ‘any other judgment’”. *In re Estate of Meader*, 1997 WL 672205 at *2, No. 03A01-9707-CH-00252 (Tenn. Ct. App. Oct. 30, 1997). In *Anderson v. Harrison*, 1999 WL 5057 at *3, No. 02A01-9805-GS-00132 (Tenn. Ct. App. Jan. 7, 1999), it was further stated that recent decisions have demonstrated a “growing acceptance” that the ten year statute of limitations applies to orders for child support. As discussed, *infra*, effective July 1, 1997, the legislature added Tenn. Code Ann § 36-5-103(g), which provides that judgments for child support are enforceable “without limitation as to time.” Because the relevant events in the present case occurred prior to the effective date of Tenn. Code Ann. § 36-5-103(g), we hold that the ten year statute of limitations contained in Tenn. Code. Ann § 28-3-110(2) applies to the present action to enforce these two judgments.

When the statute of limitations period begins to run depends on whether the child support arrearages have been reduced to judgment for a sum certain. If a party is seeking to enforce an ongoing order for child support and the arrearages have not been reduced to judgment for a sum certain, then the statute begins to run when the last child support payment is supposed to have been made, which typically is when the child reaches the age of majority. *See In re Estate of Meader, supra*. In those cases where the arrearages for child support have been reduced to judgment for a sum certain, the custodial parent is required to bring the action for enforcement within ten years of obtaining the judgment. *Anderson v. Harrison*, 1999 WL 5057 at *3 (citing *Vaughn v. Vaughn*, 1988 WL 68062 at *4 (Tenn. Ct. App. July 1, 1988)). This distinction was recently addressed by the Middle Section of this Court in *County of San Mateo, California v. Green*, 2001 WL 120729, No. M1999-00112-COA-R3-CV (Tenn. Ct. App. Feb. 14, 2001). The *San Mateo* Court held that an action to enforce a judgment for public assistance paid by the County of San Mateo was not timely filed because it was brought more than ten years after the judgment was entered. The Court also discussed the distinction “between arrearages which had been reduced to a judgment and later failures to pay child support pursuant to an ongoing obligation.” *Id.* at *2 (citations omitted). Since the present case involves Plaintiff's attempt to enforce two judgments for a sum certain rather than child support pursuant to an ongoing obligation, we conclude that the ten year statute of limitations period for each judgment began to run when the judgments were entered, which was May 20, 1985, and January 22, 1986. Accordingly, these ten year statute of limitations periods ran on May 20, 1995, and January 22, 1996, respectively. The present action was filed on July 14, 1999, and was, therefore, untimely.

Plaintiff argues that the July 1, 1997, addition of Tenn. Code Ann. § 36-5-103(g) is applicable to this case and therefore saves his lawsuit. We disagree. This amendment provides that “Judgments for child support payments for each child subject to the order for child support pursuant to this part shall be enforceable without limitation as to time.” Defendant argues that the statute of

limitations expired before this amendment took effect and he, therefore, had a vested right in the expiration of these claims. This very issue was discussed by the Court in *San Mateo, supra*, which concluded that the passage of Tenn. Code Ann. § 36-5-103(g) cannot be applied retroactively to revive a claim which expired prior to the effective date of the statutory amendment. In reaching this conclusion, the *San Mateo* Court stated:

San Mateo argues, however, that a 1997 legislative amendment to the child support statutes should be applied to this case. . . . This statutory amendment was enacted after San Mateo had lost its ability to enforce the judgment against Mr. Green under either California or Tennessee law. Mr. Green argues that it cannot be applied retroactively so as to resuscitate a claim that had expired under existing law. We agree that even if Tenn. Code Ann. § 36-5-103(g) can be interpreted as an amendment to Tenn. Code Ann. § 28-3-110(2), where arrearage on a child support obligation has been reduced to a judgment, it cannot be applied retroactively to the 1983 judgment.

Our Supreme Court has discussed the effect of retroactive legislation as follows:

Article I, section 20 of the Tennessee Constitution provides that "no retrospective law, or law impairing the obligations of contracts, shall be made." We have construed this provision as prohibiting laws "which take away or impair vested rights acquired under existing laws or create a new obligation, impose a new duty, or attach a new disability in respect of transactions or considerations already passed." A "vested right," although difficult to define with precision, is one "which it is proper for the state to recognize and protect and of which [an] individual could not be deprived arbitrarily without injustice."

In considering whether a statute impairs a vested right under article I, section 20, we frequently have observed that statutes which are procedural or remedial in nature may be applied retrospectively. In general, a statute is procedural "if it defines the . . . proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right." A statute is remedial if it provides the means by which a cause of action may be effectuated, wrongs addressed, and relief obtained. We have clarified, however, that even a procedural or remedial statute may not be applied

retrospectively if it impairs a vested right or contractual obligation in violation of article I, section 20.

Doe v. Sundquist, 2 S.W.3d 919, 923-24 (Tenn. 1999).

The Tennessee Constitution's prohibition on retrospective laws includes enactments which "take away or impair vested rights acquired under existing laws." *Morris v. Gross*, 572 S.W.2d 902, 907 (Tenn. 1978). A defendant has a vested right in a statute of limitation once the statutory limitation period has run without action by the plaintiff. *See Ford Motor Co. v. Moulton*, 511 S.W.2d 690, 697 (Tenn. 1974). "[I]n Tennessee a defendant has a vested right in a statute of limitations defense if the cause of action has accrued and the time allotted has expired." *Wyatt v. A-Best Products Co., Inc.*, 924 S.W.2d 98, 104 (Tenn. Ct. App. 1995). Thus,

when a cause of action is barred by a statute of limitation, in force at the time the right to sue arose, and until the time of limitation expired, . . . the right to rely upon the statute as a defense is a vested right that cannot be disturbed by subsequent legislation.

Id. at 103 (citations omitted).

San Mateo, 2001 WL 120729 at *3.

We agree with the rationale and conclusion reached by this Court in *San Mateo* on this issue, and hold that the enactment of Tenn. Code Ann. § 36-5-103(g) cannot operate retroactively to revive Plaintiff's otherwise expired judgment for a sum certain for attorney fees taxed as child support.²

² Because we conclude that the judgments have expired, we need not decide whether attorney fees taxed as child support are considered a judgment "for child support" within the meaning of Tenn. Code Ann. § 36-5-103(g).

Conclusion

The Judgment of the Trial Court granting summary judgment to Plaintiff is reversed, as is the Trial Court's denial of Defendant's motion to dismiss. Plaintiff's suit is dismissed, and this case is remanded to the Trial Court for such further proceedings as may be necessary, if any, consistent with this Opinion and for collection of the costs below. Costs of this appeal are taxed to the Appellee, Herbert S. Moncier.

D. MICHAEL SWINEY, JUDGE